

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

| | | |
|--------------------------------------|---|----------------------|
| ROGER D. FEARS, Register No. 510295, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 05-4064-CV-C-SOW |
| |) | |
| HARLAN HARTSFIELD, |) | |
| |) | |
| Defendant. |) | |

ORDER

On April 20, 2006, the United States Magistrate Judge recommended dismissing plaintiff's claims. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record, including the exceptions filed by plaintiff on May 25, 2006. The clear import of plaintiff's exceptions indicates he was compelled to carry the meat up the stairs all at one time, even though not expressly told to do so. This is a material fact dispute as to what plaintiff was required to do; thus, summary judgment is not appropriate.

IT IS, THEREFORE, ORDERED that the Magistrate Judge's April 20, 2006 Report and Recommendation is overruled [47]. It is further

ORDERED that defendant Hartsfield's motion for summary judgment is denied.[41].

/s/Scott O. Wright

SCOTT O. WRIGHT

Senior United States District Judge

Dated: July 6, 2006